

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1765 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

DUDHIBEN MERAKHBHAI

Versus

NATHABHAI HAZABHAI

Appearance:

MR YS LAKHANI for Petitioner
MR RM CHHAYA for Respondent No. 1
Respondent No.2 served.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision:24 & 25 /04/96

ORAL JUDGEMENT

This Revision Application arises out of the proceedings under section 24 of the Hindu Marriage Act, 1955 relating to maintenance pendente lite and expenses of court-proceedings, in the following facts and

circumstances.

The respondent No.1, Natrhabhai Hazabhai, is the original applicant who has filed Hindu Marriage petition No.17/94 against the petitioner-wife and the respondent No.2 for divorce from the petitioner-wife under section 13 of the said Act, on the ground that the petitioner-wife has been living in adultery with respondent No.2. The said divorce proceedings are pending in the Court of the learned Assistant Judge, Junagadh. The petitioner has joined respondent No.2 as the paramour of the petitioner-wife.

By the application Exh.10, the petitioner-wife claimed maintenance at the rate of Rs.1000/- per month and Rs.2,000/- as expenses to contest the divorce proceedings. The petitioner-wife, inter alia, contended in the said petition that she has no independent income sufficient for her and that the respondent-husband is a well-to-do farmer having good income. The respondent-husband filed objections denying that the petitioner-wife has no income sufficient for her maintenance. He also denied that he has any agricultural property nor he is a farmer. He has stated that he is a small farm labourer and is maintaining himself with difficulty. He further contended that the petitioner-wife did not discharge her duties as a wife and has been staying with respondent No.2 and has immoral relations with him.

The learned Extra Assistant Judge, Junagadh, by the impugned order dated July 7, 1995 passed below the said application Exh.10 in H.M.P. No.17.94, rejected the application holding that there was no evidence that the respondent-husband has plentiful of income or held immoveable agricultural properties. The wife of respondent No.2, on account of the petitioner-wife staying with respondent No.2 as his wife, had left the house of the respondent No.2. It was also alleged by the respondent-husband that the petitioner-wife had conceived a child through the respondent No.2, but the pregnancy was got terminated and that the respondent No.2 had taken the petitioner-wife from his house without intimating him or other family members. Thus, considering the pleadings and the allegations, the learned Judge prima facie was of the view that it is a fit case to refuse interim alimony to the wife. The petitioner-wife, being aggrieved by the said order of rejection of the application Exh.10, has preferred the present Revision Application.

Mr.M.A. Kharadi, for Mr.Y.S. Lakhani, learned

Advocate for the petitioner-wife, has contended that the reasons assigned by the learned Judge are of the nature that the decree of divorce on the ground of adultery is passed and there is no evidence to show the adulterous relations of the petitioner-wife with respondent No.2. Mr.Kharadi also submitted that alternatively the conduct of the petitioner-wife would not be relevant in grant of maintenance pendente lite under section 24 of the Hindu Marriage Act, 1955. In this connection, he has placed reliance on the case of LALLUBHAI KESHAVRAM JOSHI v. NIRMALABEN LALLURAM JOSHI, reported in 13 G.L.R. page. 626. Mr.R.M.Chhaya, learned Advocate appearing for the respondent-husband, has supported the impugned order.

I have heard the learned Advocates for the parties.

Section 24 of the Hindu Marriage Act, 1955 contemplates that where in any proceedings under the Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceedings, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, as is found to be reasonable by the Court.

April 25, 1996.

Thus, the object of section 24 of the Act providing for maintenance pendente lite to a party in matrimonial proceedings is obviously to provide financial assistance to the indigent spouse to maintain herself or himself during the pendency of the proceedings and also to have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds. This object of the provisions of sec.24 is to be applied at the discretion of the Court, having regard to the facts and circumstances of the case.

In the present case, the learned Judge has prima facie believed that the petitioner-wife has been residing with the respondent No.2 and she has been looked after by the respondent No.2. There are reciprocal rights and obligations of both the spouses. When wife is not

discharging any of the marital obligations and the Court below recording finding that wife was living unchaste life, she cannot claim any maintenance.

It is true that the Court has to bear in mind that unless good cause is shown for depriving the claim, she or he, if not possessed of independent means, is entitled to maintenance pendente lite and the expenses of litigation. However, when the applicant is being supported and maintained by an adulterer and that the respondent-husband has not sufficient means, it may properly constitute good cause for rejecting the request for maintenance pendente lite. In the facts of the case and circumstances, the learned Judge, in my view, has rightly exercised the jurisdiction in rejecting the application.

Mr.Kharadi, for Mr.Y.S. Lakhani, learned Advocate appearing for the petitioner-wife, submitted that the reasonings given by the learned Judge are such as if the decree for divorce is passed on the ground of adultery. On perusal of the impugned order, it is not so. What is observed by the learned Judge are the prima facie findings to the effect that at this stage the allegations cannot be said to be baseless. He has also recorded that there is no pleading by the petitioner-wife as to after separation, how and with whom she has been staying or as to who is maintaining her after she left the matrimonial home. The learned Judge has also observed that the general attitude of the wife would be to approach the Court for maintenance, if she is deserted by her husband. In the present case, no maintenance application under sec.125 of the Code of Criminal Procedure was ever preferred by the petitioner-wife, despite the fact that about more than two years had elapsed since separation. Considering the pleadings and the allegations, the learned Judge held that it was a fit case to refuse interim alimony to the wife. Having given careful and anxious thought and attention to all those pleadings and allegations, I do not see any reason to warrant any interference with the conclusions arrived at by the learned Judge.

In the case of LALLUBHAI KESHAVRAM JOSHI v. NIRMALABEN LALLURAM JOSHI, reported in 13 G.L.R. page 626 (supra), it has been held that the provisions of sec.24 of the Hindu Marriage Act are not controlled by the provisions contained in any other section of the Act. Therefore, conduct of the parties is not to be looked into by the Court while passing the order with regard to interim alimony. Relying upon this decision, Mr.Kharadi

contended that the adulterous life, if any, of the petitioner-wife would be of no consequence and the wife would be entitled to get the maintenance during the proceedings. I am afraid, this contention cannot be accepted, inasmuch as the conduct of the parties, as is referred to in the case of LALLUBHAI JOSHI (supra) is a conduct during the matrimonial proceedings and thereby the pleadings and the allegations cannot be brushed aside. The contention is Mr.Kharadi is, therefore, required to be discarded.

In the above premises, the Revision Application fails and is rejected. Rule discharged. There shall be no order as to costs.
